

Kalustyans and International Brotherhood of Teamsters, Local Union 575, AFL-CIO, Petitioner.
Case 22-RC-11765

October 23, 2000

DECISION AND DIRECTION

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered determinative challenges and objections in an election held August 4, 1999, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 21 for and 18 against the Petitioner, with 3 determinative challenged ballots.¹

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the hearing officer's findings and recommendations only to the extent consistent with this Decision and Direction.

The parties agreed to a unit including "shipping clerks" and excluding "office clerical employees," as sought by the Petitioner in its petition.² The Petitioner subsequently challenged the ballots of Kerri Goad, Michelle Hill-Taylor, and Nancy Stratford on the basis that they were office clerical employees, and thus excluded from the unit.³

The hearing officer recommended that the challenges be sustained. In particular, the hearing officer found that the parties' objective intent with respect to the challenged voters was ambiguous because the challenged voters lacked bona fide job titles, and because "a significant part of [the challenged voters'] job duties involved functions not directly related to the shipping of the Employer's merchandise." The hearing officer then proceeded to resolve the unit placement issue using community of interest principles, and found that the challenged voters "are office clerical employees and not shipping clerks and that they do not have a community of interest with the Unit employees."

¹ The three challenged ballots at issue are those of Kerri Goad, Michelle Hill-Taylor, and Nancy Stratford. A fourth challenged ballot, which was irregularly marked, was found by the Regional Director to be a vote against the Petitioner, and this ballot is no longer in dispute.

² The stipulated unit included "[a]ll full-time and regular part-time grinders, millers, forklift operators, shipping and receiving employees, machine shop employees, sanitation employees, quality assurance employees, shipping clerks, packaging lead person, miller lead person, and all other warehouse employees employed by the Employer at its Union, New Jersey location but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act."

³ It is undisputed that although employee Ana Moreno performs the same duties as the three challenged voters, she voted in the election without challenge. According to the Petitioner, its failure to challenge Moreno's ballot was inadvertent.

The Employer, in its exceptions, contends that the stipulation to include "shipping clerks" is clear, and that since the challenged voters are shipping clerks, they should be included in the unit. Alternatively, the Employer contends that even if the challenged voters' job titles were unclear (and, accordingly, the stipulation was ambiguous on its face as to their inclusion or exclusion), extrinsic evidence establishes that the parties intended to include the challenged voters in the unit. Finally, the Employer asserts that even if the Board were to apply a community-of-interest analysis, the challenged voters share a community-of-interest with the unit employees.

For the reasons set forth below, we agree with the Employer that the hearing officer erred in sustaining the Petitioner's challenges.

It is well established that, when resolving determinative challenged ballots in cases involving stipulated bargaining units, "the Board will rely on the scope of the stipulation itself, with its various inclusions and exclusions, unless it is contrary to any express statutory provisions or established Board policies." *Venture Industries*, 327 NLRB 918 (1999) (quoting *Wells Fargo Alarm Services*, 289 NLRB 562 (1988)). When the objective intent is clear, the Board will hold the parties to their agreement. If, however, the objective intent is ambiguous, the Board will apply the community-of-interest doctrine in order to resolve a challenged voter's eligibility status. *Id.*, and cases cited therein.

The stipulation in this case reflects a clear intent on the part of the parties to include shipping clerks in the unit, and to exclude office clerical employees. This stipulation, however, does not on its face indicate whether the parties intended the challenged voters to be included in the unit as shipping clerks, or excluded from the unit as office clerical employees. Cf. *Avecor, Inc.*, 309 NLRB 73, 74 (1992). This is because, as the hearing officer found, there are no written job descriptions, performance evaluations, or any other records from the challenged voters' personnel files that could be used to establish the challenged voters' job classifications. Accordingly, we shall examine their job functions.

The record evidence establishes that the challenged voters perform duties that a shipping clerk would perform. Specifically, they are the only employees that generate work orders, pick tickets, bills of lading, and freight bills, all of which are documents integral to shipping operations. In addition, they have almost exclusive responsibility for making arrangements with carriers for shipping Kalustyan's merchandise, negotiating freight rates, and answering customer calls concerning the status of shipments. Further, they generate sample request forms from potential customers requesting product sam-

ples, and pass these forms to the laboratory/quality assurance department to be filled. According to the testimony of President Bas, the Employer receives “a lot” of requests for product samples and has FedEx and UPS drop boxes on its premises to mail the large volume of requests. Moreover, when sales are transacted, the challenged voters generate sales contracts and confirmations on their individual computers; and where the sale involves a “draw” from a buyer’s call contract, they are also responsible for updating the buyer’s call contract to note the amount drawn. Finally, in cases where a customer has specific product labeling requirements, Kerri Goad, one of the challenged voters, is responsible for producing the required labels using a laser printer.

These duties are consistent with those of shipping clerks. See, e.g., *Blue Circle Cement Co.*, 319 NLRB 661, 666 (1995) (shipping clerks, among other functions, make a record of the customers’ orders, prepare bills of lading and forward the bills of lading to the shipping area or loading dock for loading the trucks); *Doxsee Food Corp.*, 218 NLRB 934, 935–936 (1975) (the shipping clerk handled bills of lading, did light bookkeeping, typing, took care of back haul reports, and kept track of all incoming and outgoing materials and supplies). Moreover, they are distinct from the duties of the Employer’s office clerical employees, who primarily provide secretarial support.⁴

⁴ We recognize that the challenged voters work in the office with the office clerical employees, and have separate supervision and different

Finally, the record establishes—and the Petitioner does not contest—that if the challenged voters are not shipping clerks, then, at the time the stipulation was entered into, there would have been no employees in the shipping clerks classification.

Under these circumstances, we find that the intent of the parties to include the challenged voters in the unit as shipping clerks is clear. We further find that the Petitioner has not shown that the inclusion of these employees would be inconsistent with any express statutory provisions or established Board policies. Accordingly, we overrule the challenges to the ballots of these three employees and direct that the ballots be opened and counted.

DIRECTION

IT IS DIRECTED that this proceeding be remanded to the Regional Director for Region 22, who shall, within 14 days from the date of this Decision and Direction, open and count the ballots of Kerri Goad, Michelle Hill-Taylor, and Nancy Stratford. The Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification.

hours of work from the shipping and receiving employees. However, in light of the record evidence establishing that the challenged voters perform the duties of shipping clerks within the meaning of the stipulation, these factors do not mandate the exclusion of the challenged voters from the unit.